

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
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X  
UNITED STATES OF AMERICA  
Respondent

vs.  
RODERICK GUNN  
Petitioner

12CV6632  
Case No: 03 Cr. 1277  
AFFIDAVIT IN SUPPORT OF  
TITLE 28 U.S.C. § 2255 MOTION

\_\_\_\_\_  
X

I, Roderick Gunn, under the penalty of perjury, duly deposes  
and says:

- (1) I am the petitioner in the above mentioned action.
- (2) that I am knowledgeable of the facts and events occurred  
herein.
- (3) that counsel [Roger Adler] had expressly told me that the  
statements Made at the proffer sessions would not be used  
against me in the case in chief, as promised by the term of  
the agreement.

(4) that counsel [Roger Adler] expressly informed me that I would only be prosecuted for my initial charge [922(g)(5)] on the grounds that the other offense were discovered by the Government from my independent incriminating statements.

(5) that counsel [Roger Adler] had told me that based on this promise in the proffer agreement, not to use my statements in the case in chief [except for rebuttal], he would seek a sentence of one year or less, to prevent any immigration consequences against me.

(6) that this claim was also raised in my Motion To Withdraw the guilty plea, prior to sentence, confirming counsel's statement that I wouldn't be prosecuted for the crimes disclosed at the proffer sessions.

(7) that Mr Adler had failed to notify the court that I was never charged on a valid grand jury indictment since my arrest.

(8) that Mr Adler failed to challenge the Fifth Amendment violation [no valid indictment], throughout his representation.

(9) that Mr Adler failed to challenge the Government's use of my protected statements.

(10) that had I knew that the Government would have used my proffer statements against me, I would not have waived my rights derived from Fed. R. Evid. 410, or my Fifth Amendment right to be free from Self-Incrimination.

(11) that I had preserved numerous claims concerning the use of my statements in violation of the proffer agreement.

(12) that I had requested a Kastigar hearing prior to sentencing, but counsel neglected to pursue the issue, and the court neglected to respond to the motion.

(13) that I had preserved a claim that I was not an "illegal alien" on the grounds that at the time of my arrest, I had an approved I-130 application under the LIFE ACT.

(14) that counsel Richard Palma had argued at length that I'm not an "aider and abettor" in light of Second Circuit authority, *United States v. Medina*, 32 F.3d 40 (2d Cir 1994).

(15) that counsel, Richard Palma neglected to raise this *Medina* claim in the appellate brief.

(16) that counsel, Mr Palma neglected to raise the "illegal alien issue" in the appellate brief.

(17) that Mr Palma neglected to raise numerous claims which were already preserved on the district court records, in his appellate brief.

(18) that I had raised the breach of the proffer agreement in a pro se motion prior to sentencing, and counsel Neglected to investigate the issue and to present this breach to the court.

(19) that my plea was unknowing on the grounds that I don't know exactly what offense the court accepted the guilty plea for in counts three, five and six. The Information charges something different from what the court notified me that I was charged for.

(20) that my waiver to my 410 rights and Fifth Amendment right to be free from self-incrimination was unknowing and involuntarily entered when I signed the proffer agreement.

(21) that all statements in this affidavit are truthfully made.

Wherefore, I respectfully request of this court to grant the relief herein sought, or in the alternative, a hearing.

Respectfully submitted

Dated: August 16 ,2012

A handwritten signature in dark ink, appearing to read "R. Gunn", is written over a horizontal line.

Roderick Gunn

Certificate of Service

This certifies that I have on this 16<sup>th</sup> day of August, <sup>2012</sup> placed a true copy of my Motion To Vacate, Set Aside and Correct Sentence, pursuant to 28 U.S.C. §2255, along with a copy of my supporting Memorandum of Law, and Affidavit, in the U.S. Mail, via first class postage, and addressed to:

United States Attorneys Office

Attn: John O'Donnell

One Saint Andrew Plaza  
New York, N.Y 10007

R. Gunn